

I urge all of my colleagues to support this short-term extension by voting in favor of S. 1513.

Mr. THOMPSON of Pennsylvania. I yield back the balance of my time.

Ms. VELAZQUEZ. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Ms. VELAZQUEZ) that the House suspend the rules and pass the bill, S. 1513.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. THOMPSON of Pennsylvania. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

### COAST GUARD ACQUISITION REFORM ACT OF 2009

Mr. CUMMINGS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1665) to structure Coast Guard acquisition processes and policies, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1665

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Coast Guard Acquisition Reform Act of 2009".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

#### TITLE I—RESTRICTIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS

Sec. 101. Procurement structure.

#### TITLE II—COAST GUARD ACQUISITION POLICY

Sec. 201. Operational requirements.

Sec. 202. Required contract terms.

Sec. 203. Life-cycle cost estimates.

Sec. 204. Test and evaluation.

Sec. 205. Capability standards.

Sec. 206. Acquisition program reports.

Sec. 207. Unfinalized contractual actions.

Sec. 208. Guidance on excessive pass-through charges.

Sec. 209. Acquisition of major capabilities: Alternatives analysis.

Sec. 210. Cost overruns and delays.

Sec. 211. Report on former Coast Guard officials employed by contractors to the agency.

Sec. 212. Department of Defense consultation.

#### TITLE III—COAST GUARD PERSONNEL

Sec. 301. Chief Acquisition Officer.

Sec. 302. Improvements in Coast Guard acquisition management.

Sec. 303. Recognition of Coast Guard personnel for excellence in acquisition.

Sec. 304. Enhanced status quo officer promotion system.

Sec. 305. Coast Guard acquisition workforce expedited hiring authority.

#### SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) COMMANDANT.—The term "Commandant" means the Commandant of the Coast Guard.

(3) LEVEL 1 ACQUISITION.—The term "Level 1 acquisition" means—

(A) an acquisition by the Coast Guard—

(i) the estimated life-cycle costs of which exceed \$1,000,000,000; or

(ii) the estimated total acquisition costs of which exceed \$300,000,000; or

(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

(i) due to—

(I) the experimental or technically immature nature of the asset;

(II) the technological complexity of the asset;

(III) the commitment of resources; or

(IV) the nature of the capability or set of capabilities to be achieved; or

(ii) because such acquisition is a joint acquisition.

(4) LEVEL 2 ACQUISITION.—The term "Level 2 acquisition" means an acquisition by the Coast Guard—

(A) the estimated life-cycle costs of which are equal to or less than \$1,000,000,000, but greater than \$300,000,000; or

(B) the estimated total acquisition costs of which are equal to or less than \$300,000,000, but greater than \$100,000,000.

(5) LIFE-CYCLE COST.—The term "life-cycle cost" means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

#### TITLE I—RESTRICTIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS

##### SEC. 101. PROCUREMENT STRUCTURE.

(a) IN GENERAL.—

(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the end of the 180-day period beginning on the date of enactment of this Act.

(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard shall use full and open competition for any acquisition contract awarded after the date of enactment of this Act, unless otherwise excepted in accordance with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

(b) EXCEPTIONS.—

(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsections (a) and (e), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program (otherwise known as the "Rescue 21" program) and National Security Cutters 2 and 3.

(2) COMPLETION OF ACQUISITION BY LEAD SYSTEMS INTEGRATOR.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard—

(A) to complete any delivery order or task order, including the exercise of previously established options on a delivery order or task order that was issued to a lead systems integrator on or before the date that is 180 days after the date of enactment of this Act without any change in the quantity of capabilities or assets or the specific type of capabilities or assets covered by the order;

(B) for a contract awarded after the date that is 180 days after the date of enactment of this Act for acquisition of, or in support of, the HC-130J aircraft, the HH-65 aircraft, or the C4ISR system, if the requirements of subsection (c) are met with respect to such acquisitions;

(C) for a contract awarded after the date that is 180 days after the date of enactment of this Act for acquisition of, or in support of, Maritime Patrol Aircraft, if the requirements of subsection (c) are met with respect to such an acquisition; and

(D) for the acquisition of, or in support of, additional National Security Cutters or Maritime Patrol Aircraft, if the Commandant determines that—

(i) the acquisition is in accordance with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation;

(ii) the acquisition and the use of a private sector entity as a lead systems integrator for the acquisition are in the best interest of the Federal Government; and

(iii) the requirements of subsection (c) are met with respect to such acquisition.

(3) REPORT ON DECISION-MAKING PROCESS.—If the Commandant determines under subparagraph (B), (C), or (D) of subsection (b)(2) that the Coast Guard will use a private sector lead systems integrator for an acquisition, the Commandant shall notify in writing the appropriate congressional committees of the Commandant's determination and shall provide a detailed rationale for the determination, at least 30 days before the award of a contract or issuance of a delivery order or task order, using a private sector lead systems integrator, including a comparison of the cost of the acquisition through the private sector lead systems integrator with the expected cost if the acquisition were awarded directly to the manufacturer or shipyard. For purposes of that comparison, the cost of award directly to a manufacturer or shipyard shall include the costs of Government contract management and oversight.

(c) LIMITATION ON LEAD SYSTEMS INTEGRATORS.—Neither an entity performing lead systems integrator functions for a Coast Guard acquisition nor a Tier 1 subcontractor for any acquisition described in subparagraph (B), (C), or (D) of subsection (b)(2) may have a financial interest in a subcontractor below the Tier 1 subcontractor level unless—

(1) the subcontractor was selected by the prime contractor through full and open competition for such procurement;

(2) the procurement was awarded by the lead systems integrator or a subcontractor through full and open competition;

(3) the procurement was awarded by a subcontractor through a process over which the lead systems integrator or a Tier 1 subcontractor exercised no control; or

(4) the Commandant has determined that the procurement was awarded in a manner consistent with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

(d) RULE OF CONSTRUCTION.—The limitation in subsection (b)(1)(A) on the quantity and specific type of assets to which subsection

(b) applies shall not be construed to apply to the modification of the number or type of any sub-systems or other components of a vessel or aircraft described in subparagraph (B), (C), or (D) of subsection (b)(2).

(e) **TERMINATION DATE FOR EXCEPTIONS.**—Except as described in subsection (b)(1), the Commandant may not use a private sector entity as a lead systems integrator for acquisition contracts awarded, or task orders or delivery orders issued, after the earlier of—

(1) September 30, 2011; or

(2) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient acquisition workforce personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead systems integrator in an efficient and cost-effective manner.

## **TITLE II—COAST GUARD ACQUISITION POLICY**

### **SEC. 201. OPERATIONAL REQUIREMENTS.**

(a) **IN GENERAL.**—No Level 1 or Level 2 acquisition program may be initiated by the Coast Guard, and no production contract may be awarded for such an acquisition, unless the Commandant has approved an operational requirement for such acquisition.

(b) **OPERATIONAL REQUIREMENT FOR ACQUISITION PROGRAMS.**—

(1) **IN GENERAL.**—The Commandant shall establish mature and stable operational requirements for acquisition programs.

(2) **ELEMENTS.**—Prior to establishing operational requirements under paragraph (1), the Commandant shall—

(A) prepare a preliminary statement of need, a concept of operations, an analysis of alternatives or the equivalent, an estimate of life-cycle costs, and requirements for interoperability with other capabilities and assets within and external to the Coast Guard; and

(B) in preparing the concept of operations under subparagraph (A), coordinate with acquisition and support professionals, requirements officials, operational users and maintainers, and resource officials who can ensure the appropriate consideration of performance, cost, schedule and risk trade-offs.

(c) **CONSIDERATION OF TRADE-OFFS.**—In establishing operational requirements under subsection (a), the Commandant shall develop and implement mechanisms to ensure that trade-offs among performance, cost, schedule, and risk are considered in the establishment of operational requirements for development and production of a Level 1 or Level 2 acquisition.

(d) **ELEMENTS.**—The mechanisms required under this section shall ensure at a minimum that Coast Guard officials responsible for acquisition management, budget, and cost estimating functions have the authority to develop cost estimates and raise cost and schedule matters at any point in the process of establishing operational requirements for a Level 1 or Level 2 acquisition.

### **SEC. 202. REQUIRED CONTRACT TERMS.**

(a) **IN GENERAL.**—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of this Act—

(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Com-

mandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

(2) requires that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and

(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

(b) **PROHIBITED CONTRACT PROVISIONS.**—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of this Act does not include any provision allowing for equitable adjustment that differs from the Federal Acquisition Regulation.

(c) **EXTENSION OF PROGRAM.**—Any contract, contract modification, or award term extending a contract with a lead systems integrator—

(1) shall not include any minimum requirements for the purchase of a given or determinable number of specific capabilities or assets; and

(2) shall be reviewed by an independent third party with expertise in acquisition management, and the results of that review shall be submitted to the appropriate congressional committees at least 60 days prior to the award of the contract, contract modification, or award term.

### **SEC. 203. LIFE-CYCLE COST ESTIMATES.**

(a) **IN GENERAL.**—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each acquisition with a total acquisition cost that equals or exceeds \$10,000,000 and an expected service life of 10 years, and to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

(b) **TYPES OF ESTIMATES.**—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition program or project.

(c) **REQUIRED UPDATES.**—For each Level 1 or Level 2 acquisition program or project the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the program or project enters a new acquisition phase.

### **SEC. 204. TEST AND EVALUATION.**

(a) **TEST AND EVALUATION MASTER PLAN.**—

(1) **IN GENERAL.**—For any Level 1 or Level 2 acquisition program or project the Coast Guard Chief Acquisition Officer must approve a Test and Evaluation Master Plan specific to the acquisition program or project for the capability, asset, or sub-systems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the program or project.

(2) **TEST AND EVALUATION STRATEGY.**—The TEMP shall—

(A) set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and sub-system-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or sub-system of the capability or asset is approved for production; and

(B) require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.

(3) **OTHER COMPONENTS OF TEMP.**—At a minimum, the TEMP shall identify—

(A) the key performance parameters to be resolved through the integrated test and evaluation strategy;

(B) critical operational issues to be assessed in addition to the key performance parameters;

(C) specific development test and evaluation phases and the scope of each phase;

(D) modeling and simulation activities to be performed, if any, and the scope of such activities;

(E) early operational assessments to be performed, if any, and the scope of such assessments;

(F) operational test and evaluation phases;

(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and

(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

(4) **UPDATE.**—The Coast Guard Chief Acquisition Officer shall approve an updated TEMP whenever there is a revision to program or project test and evaluation strategy, scope, or phasing.

(5) **LIMITATION.**—The Coast Guard may not—

(A) proceed past that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the TEMP is approved by the Coast Guard Chief Acquisition Officer; or

(B) award any production contract for a capability, asset, or sub-system for which a TEMP is required under this subsection before the TEMP is approved by the Coast Guard Chief Acquisition Officer.

(b) **TESTS AND EVALUATIONS.**—

(1) **IN GENERAL.**—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the sub-systems of the capability or asset for which a TEMP has been prepared under subsection (a).

(2) **USE OF THIRD PARTIES.**—The Commandant shall ensure that the Coast Guard uses third parties with expertise in testing and evaluating the capabilities or assets and the sub-systems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a TEMP.

(3) **COMMUNICATION OF SAFETY CONCERNS.**—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and sub-systems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the sub-systems concerned and to the Coast Guard Chief Acquisition Officer.

(4) **REPORTING OF SAFETY CONCERNS.**—Any safety concerns that have been reported to the Chief Acquisition Officer for an acquisition program or project shall be reported by the Commandant to the appropriate congressional committees at least 90 days before the award of any contract or issuance of any delivery order or task order for low, initial, or full-rate production of the capability or asset concerned if they will remain uncorrected or unmitigated at the time such a contract is awarded or delivery order or task order is issued. The report shall include a justification for the approval of that level of production of the capability or asset before the safety concern is corrected or mitigated. The report shall also include an explanation of the actions that will be taken to correct or mitigate the safety concern, the date by which those actions will be taken, and the adequacy of current funding to correct or mitigate the safety concern.

(5) **ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.**—If operational test and evaluation on a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any sub-systems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

(B) notify the appropriate congressional Committee of the safety concern not later than 30 days after notification is made to the program manager and Chief Acquisition Officer, and include in such notification—

(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and sub-systems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;

(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and sub-systems of the capabilities or assets, and the date by which those actions will be taken; and

(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and sub-systems of the capabilities or assets and in previously produced capabilities or assets and sub-systems.

(C) **DEFINITIONS.**—In this section:

(1) **DEVELOPMENTAL TEST AND EVALUATION.**—The term “developmental test and evaluation” means—

(A) the testing of a capability or asset and the sub-systems of the capability or asset to determine whether they meet all contractual performance requirements, including technical performance requirements, supportability requirements, and interoperability requirements and related specifications; and

(B) the evaluation of the results of such testing.

(2) **OPERATIONAL TEST AND EVALUATION.**—The term “operational test and evaluation” means—

(A) the testing of a capability or asset and the sub-systems of the capability or asset, under conditions similar to those in which the capability or asset and subsystems will actually be deployed, for the purpose of determining the effectiveness and suitability of the capability or asset and sub-systems for use by typical Coast Guard users to conduct those missions for which the capability or asset and sub-systems are intended to be used; and

(B) the evaluation of the results of such testing.

(3) **SAFETY CONCERN.**—The term “safety concern” means any hazard associated with a capability or asset or a sub-system of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or sub-system or any hazard associated with the capability, asset, or sub-system that is likely to cause major damage to the capability, asset, or sub-system during the course of its normal operation by a typical Coast Guard user.

(4) **TEMP.**—The term “TEMP” means a Test and Evaluation Master Plan for which approval is required under this section.

#### SEC. 205. CAPABILITY STANDARDS.

(a) **CUTTER CLASSIFICATION.**—The Commandant shall cause each cutter, other than a National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of this Act to be classed by the American Bureau of Shipping before final acceptance.

(b) **TEMPEST TESTING.**—The Commandant shall—

(1) cause all electronics on all aircraft, surface, and shore capabilities and assets that require TEMPEST certification and that are delivered after the date of enactment of this Act to be tested in accordance with TEMPEST standards and communication security (COMSEC) standards by an independent third party that is authorized by the Federal Government to perform such testing; and

(2) certify that the capabilities and assets meet all applicable TEMPEST requirements.

(c) **NATIONAL SECURITY CUTTERS.**—

(1) **NATIONAL SECURITY CUTTERS 1 AND 2.**—Not later than 90 days before the Coast Guard awards any contract or issues any delivery order or task order to strengthen the hull of either of National Security Cutter 1 or 2 to resolve the structural design and performance issues identified in the Department of Homeland Security Inspector General's report OIG-07-23 dated January 2007, the Commandant shall submit to the appropriate congressional committees and the Committee on Homeland Security of the House of Representatives all results of an assessment of the proposed hull strengthening design conducted by the Coast Guard, including—

(A) a description in detail of the extent to which the hull strengthening measures to be implemented on those cutters will enable the cutters to meet contract and performance requirements;

(B) a cost benefit analysis of the proposed hull strengthening measures for National Security Cutters 1 and 2; and

(C) a description of any operational restrictions that would have to be applied to either National Security Cutters 1 or 2 if the proposed hull strengthening measures were not implemented on either cutter.

(2) **OTHER VESSELS.**—The Commandant shall cause the design and construction of each National Security Cutter, other than National Security Cutters 1, 2, and 3, to be assessed by an independent third party with expertise in vessel design and construction certification.

(d) **AIRCRAFT AIRWORTHINESS.**—The Commandant shall cause all aircraft and aircraft engines acquired by the Coast Guard and delivered after the date of enactment of this Act to be assessed for airworthiness by an independent third party with expertise in aircraft and aircraft engine certification, before final acceptance.

#### SEC. 206. ACQUISITION PROGRAM REPORTS.

Any Coast Guard Level 1 or Level 2 acquisition program or project may not begin to obtain any capability or asset or proceed be-

yond that phase of its development that entails approving the supporting acquisition until the Commandant submits to the appropriate congressional committees the following:

(1) The key performance parameters, the key system attributes, and the operational performance attributes of the capability and asset to be acquired under the proposed acquisition program or project will be built to achieve.

(2) A detailed list of the systems or other capabilities with which the capability or asset to be acquired is intended to be interoperable, including an explanation of the attributes of interoperability.

(3) The anticipated acquisition program baseline and acquisition unit cost for the capability or asset to be produced and deployed under the program or project.

(4) A detailed schedule for the acquisition process showing when all capability and asset acquisitions are to be completed and when all acquired capabilities and assets are to be initially and fully deployed.

#### SEC. 207. UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) **IN GENERAL.**—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

(b) **REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.**—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action covered under subsection (a) must include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(c) **REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.**—

(1) **DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.**—A contracting officer of the Coast Guard may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) **LIMITATION ON OBLIGATIONS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) **EXCEPTION.**—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) **WAIVER.**—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code);

(B) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

(C) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) **LIMITATION ON APPLICATION.**—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(d) **INCLUSION OF NONURGENT REQUIREMENTS.**—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) **MODIFICATION OF SCOPE.**—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(f) **ALLOWABLE PROFIT.**—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(g) **DEFINITIONS.**—In this section:

(1) **UNDEFINITIZED CONTRACTUAL ACTION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “undefinitized contractual action” means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

(B) **EXCLUSION.**—Such term does not include contractual actions with respect to the following:

(i) Foreign military sales.

(ii) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(iii) Special access programs.

(2) **QUALIFYING PROPOSAL.**—The term “qualifying proposal” means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

#### **SEC. 208. GUIDANCE ON EXCESSIVE PASS-THROUGH CHARGES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commandant shall issue guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are entered into with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

(1) set forth clear standards for determining when no, or negligible, value has

been added to a contract by a contractor or subcontractor;

(2) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

(3) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(b) **EXCESSIVE PASS-THROUGH CHARGE DEFINED.**—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower-tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower-tier contractors and subcontracts and overhead and profit based on such direct costs.

(c) **APPLICATION OF GUIDANCE.**—The guidance under this subsection shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of this Act.

#### **SEC. 209. ACQUISITION OF MAJOR CAPABILITIES: ALTERNATIVES ANALYSIS.**

The Coast Guard may not acquire an experimental or technically immature capability or asset or implement a Level 1 or Level 2 acquisition, unless it has conducted an alternatives analysis for the capability or asset to be acquired in the concept and technology development phase of the acquisition process for the capability or asset. Such analysis shall be conducted by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise. Such alternatives analysis shall include—

(1) an assessment of the technical maturity of the capability or asset and technical and other risks;

(2) an examination of capability, interoperability, and other advantages and disadvantages;

(3) an evaluation of whether different combinations or quantities of specific capabilities or assets could meet the Coast Guard's overall performance needs;

(4) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

(5) when an alternative is an existing capability, asset, or prototype, an evaluation of relevant safety and performance records and costs;

(6) a calculation of life-cycle costs, including—

(A) an examination of development costs and the levels of uncertainty associated with such estimated costs;

(B) an examination of likely production and deployment costs and the levels of uncertainty associated with such estimated costs;

(C) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;

(D) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

(E) such additional measures the Commandant determines to be necessary for appropriate evaluation of the capability or asset; and

(7) the business case for each viable alternative.

#### **SEC. 210. COST OVERRUNS AND DELAYS.**

(a) **IN GENERAL.**—The Commandant shall submit a report to the appropriate congress-

sional committees as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

(1) a likely cost overrun greater than 10 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the direct costs of managing lower-tier contractors and subcontracts and overhead and profit based on such direct costs.

(b) **CONTENT.**—The report submitted under subsection (a) shall include—

(1) a detailed description of the breach and an explanation of its cause;

(2) the projected impact to performance, cost, and schedule;

(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

(4) the updated acquisition schedule and the complete history of changes to the original schedule;

(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

(7) a description of how progress in the remediation plan will be measured and monitored.

(c) **SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.**—If a likely cost overrun is greater than 20 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition program or project of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

(1) the capability or asset or capability or asset class to be acquired under the program or project is essential to the accomplishment of Coast Guard missions;

(2) there are no alternatives to such capability or asset or capability or asset class which will provide equal or greater capability in both a more cost-effective and timely manner;

(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

#### **SEC. 211. REPORT ON FORMER COAST GUARD OFFICIALS EMPLOYED BY CONTRACTORS TO THE AGENCY.**

(a) **REPORT REQUIRED.**—Not later than December 31, 2009, and annually thereafter, the Comptroller General of the United States shall submit a report to the appropriate congressional committees on the employment during the preceding year by Coast Guard contractors of individuals who were Coast Guard officials in the previous 5-year period. The report shall assess the extent to which former Coast Guard officials were provided compensation by Coast Guard contractors in the preceding calendar year.

(b) **OBJECTIVES OF REPORT.**—At a minimum, the report required by this section shall assess the extent to which former Coast Guard officials who receive compensation from Coast Guard contractors have been assigned by those contractors to work on contracts or programs between the contractor and the Coast Guard, including contracts or

programs for which the former official personally had oversight responsibility or decision-making authority when they served in or worked for the Coast Guard.

(c) **CONFIDENTIALITY REQUIREMENT.**—The report required by this subsection shall not include the names of the former Coast Guard officials who receive compensation from Coast Guard contractors.

(d) **ACCESS TO INFORMATION.**—A Coast Guard contractor shall provide the Comptroller General access to information requested by the Comptroller General for the purpose of conducting the study required by this section.

(e) **DEFINITIONS.**—In this section:

(1) **COAST GUARD CONTRACTOR.**—The term “Coast Guard contractor” includes any person that received at least \$10,000,000 in contractor awards from the Coast Guard in the calendar year covered by the annual report.

(2) **COAST GUARD OFFICIAL.**—The term “Coast Guard official” includes former officers of the Coast Guard who were compensated at a rate of pay for grade O-7 or above during the calendar year prior to the date on which they separated from the Coast Guard, and former civilian employees of the Coast Guard who served at any level of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code, during the calendar year prior to the date on which they separated from the Coast Guard.

## SEC. 212. DEPARTMENT OF DEFENSE CONSULTATION.

(a) **IN GENERAL.**—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for capabilities and assets acquired for the Coast Guard.

(b) **INTER-SERVICE TECHNICAL ASSISTANCE.**—The Commandant may enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Commands, with the oversight of Coast Guard major acquisition programs. Such memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

(1) the exchange of technical assistance and support that the Coast Guard Chief Acquisition Officer, Coast Guard Chief Engineer, and the Coast Guard Chief Information Officer may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Commands, to facilitate the development of organic capabilities in the Coast Guard.

(c) **TECHNICAL REQUIREMENT APPROVAL PROCEDURES.**—The Coast Guard Chief Acquisition Officer shall adopt, to the extent practicable, procedures that are similar to those used by the senior procurement executive of the Department of the Navy to approve all technical requirements.

(d) **ASSESSMENT.**—Within 180 days after the date of enactment of this Act, the Comptroller General shall transmit a report to the appropriate congressional committees that—

(1) contains an assessment of current Coast Guard acquisition and management capabilities to manage Level 1 and Level 2 acquisitions;

(2) includes recommendations as to how the Coast Guard can improve its acquisition

management, either through internal reforms or by seeking acquisition expertise from the Department of Defense; and

(3) addresses specifically the question of whether the Coast Guard can better leverage Department of Defense or other agencies' contracts that would meet the needs of Level 1 or Level 2 acquisitions in order to obtain the best possible price.

## TITLE III—COAST GUARD PERSONNEL

### SEC. 301. CHIEF ACQUISITION OFFICER.

(a) **IN GENERAL.**—Chapter 3 of title 14, United States Code, is amended by adding at the end the following:

#### “§ 55. Chief Acquisition Officer

“(a) **ESTABLISHMENT OF CHIEF ACQUISITION OFFICER.**—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved) and who meets the qualifications set forth under subsection (b). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual's primary duty.

“(b) **QUALIFICATIONS.**—

“(1) The Chief Acquisition Officer and any Flag Officer serving in the Acquisitions Directorate shall be an acquisition professional with a program manager level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent in one of the following qualifying positions:

“(A) Program executive officer.

“(B) Program manager of a Level 1 or Level 2 acquisition.

“(C) Deputy program manager of a Level 1 or Level 2 acquisition.

“(D) Project manager for a Level 1 or Level 2 acquisition.

“(E) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

“(2) The Commandant shall periodically publish a list of the positions designated under this subsection.

“(c) **AUTHORITY AND FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.**—The functions of the Chief Acquisition Officer shall include—

“(1) monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

“(2) maximizing the use of full and open competition at the prime contract and subcontract levels in the acquisition of property, capabilities, assets, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property, capability, asset, or service procured;

“(3) making acquisition decisions in concurrence with the technical authority of the Coast Guard, as designated by the Commandant, and consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;

“(4) ensuring the use of detailed performance specifications in instances in which performance based contracting is used;

“(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

“(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

“(7) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

“(8) developing strategies and specific plans for hiring, training, and professional development; and

“(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.”

(b) **APPLICATION OF QUALIFICATION REQUIREMENT.**—Section 55(b) of title 14, United States Code, as amended by this section, shall apply beginning October 1, 2011.

(c) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following: “55. Chief Acquisition Officer.”

(d) **ELEVATION OF DISPUTES TO THE CHIEF ACQUISITION OFFICER.**—Within 45 days after the elevation to the Chief Acquisition Officer of any design or other dispute regarding a Level 1 or Level 2 acquisition, the Commandant shall provide to the appropriate congressional committees a detailed description of the issue and the rationale underlying the decision taken by the Chief Acquisition Officer to resolve the issue.

(e) **SPECIAL RATE SUPPLEMENTS.**—

(1) **REQUIREMENT TO ESTABLISH.**—Not later than 1 year after the date of enactment of this Act and in accordance with part 9701.333 of title 5, Code of Federal Regulations, the Commandant shall establish special rate supplements that provide higher pay levels for employees necessary to carry out the amendment made by this section.

(2) **SUBJECT TO APPROPRIATIONS.**—The requirement under paragraph (1) is subject to the availability of appropriations.

## SEC. 302. IMPROVEMENTS IN COAST GUARD ACQUISITION MANAGEMENT.

(a) **PROGRAM AND PROJECT MANAGERS.**—An individual may not be assigned as the program manager for a Level 1 or Level 2 acquisition unless the individual holds a Level III acquisition certification as a program manager.

(b) **INTEGRATED PRODUCT TEAMS.**—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

(c) **TECHNICAL AUTHORITY.**—The Commandant shall maintain or designate the technical authority to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of title 14, United States Code.

(d) **DESIGNATION OF POSITIONS IN THE ACQUISITION WORKFORCE.**—

(1) **IN GENERAL.**—The Commandant shall designate a sufficient number of positions to be in the Coast Guard's acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

(2) **REQUIRED POSITIONS.**—In designating positions under subsection (a), the Commandant shall include, at a minimum, positions encompassing the following competencies and functions:

(A) Program management.

(B) Systems planning, research, development, engineering, and testing.

(C) Procurement, including contracting.

(D) Industrial and contract property management.

- (E) Life-cycle logistics.
- (F) Quality control and assurance.
- (G) Manufacturing and production.
- (H) Business, cost estimating, financial management, and auditing.
- (I) Acquisition education, training, and career development.
- (J) Construction and facilities engineering.
- (K) Testing and evaluation.

(3) **ACQUISITION MANAGEMENT HEADQUARTER ACTIVITIES.**—The Commandant shall also designate as positions in the acquisition workforce under paragraph (1) those acquisition-related positions located at Coast Guard headquarters units.

(4) **APPROPRIATE EXPERTISE REQUIRED.**—The Commandant shall ensure that each individual assigned to a position in the acquisition workforce has the appropriate expertise to carry out the responsibilities of that position.

(e) **MANAGEMENT INFORMATION SYSTEM.**—

(1) **IN GENERAL.**—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

(2) **INFORMATION MAINTAINED.**—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

(f) **REPORT ON ADEQUACY OF ACQUISITION WORKFORCE.**—

(1) **IN GENERAL.**—The Commandant shall report to the Congress by July 1 of each year on the scope of the acquisition activities to be performed in the next fiscal year and on the adequacy of the current acquisition workforce to meet that anticipated workload.

(2) **CONTENTS.**—The report shall—

(A) specify the number of officers, members, and employees of the Coast Guard currently and planned to be assigned to each position designated under subsection (d); and

(B) identify positions that are understaffed to meet the anticipated acquisition workload, and actions that will be taken to correct such understaffing.

(g) **APPOINTMENTS TO ACQUISITION POSITIONS.**—The Commandant shall ensure that no requirement or preference for officers or members of the Coast Guard is used in the consideration of persons for positions in the acquisition workforce.

(h) **CAREER PATHS.**—

(1) **IDENTIFICATION OF CAREER PATHS.**—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

(A) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

(B) publish information on such career paths.

(2) **PROMOTION PARITY.**—The Commandant shall ensure that promotion parity is established for officers and members of the Coast Guard who have been assigned to the acquisition workforce relative to officers and members who have not been assigned to the acquisition workforce.

(i) **BALANCED WORKFORCE POLICY.**—In the development of acquisition workforce policies under this section with respect to any civilian employees or applicants for employ-

ment, the Commandant shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, United States Code, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(j) **GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS.**—

(1) **ISSUANCE OF GUIDANCE.**—Not later than one year after the date of enactment of this Act, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program managers for the management of acquisition programs and projects. The guidance shall address, at a minimum—

(A) the qualifications that shall be required of program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to program management positions;

(B) authorities available to program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program; and

(C) the extent to which a program manager who initiates a new program or project will continue in management of that program or project without interruption until the delivery of the first production units of the program.

(2) **STRATEGY.**—

(A) **IN GENERAL.**—Not later than 18 months after the date of enactment of this Act, the Commandant shall develop a comprehensive strategy for enhancing the role of Coast Guard program managers in developing and carrying out acquisition programs.

(B) **MATTERS TO BE ADDRESSED.**—The strategy required by this section shall address, at a minimum—

(i) the creation of a specific career path and career opportunities for individuals who are or may become program managers, including the rotational assignments that will be provided to program managers;

(ii) the provision of enhanced training and educational opportunities for individuals who are or may become program managers;

(iii) the provision of mentoring support to current and future program managers by experienced senior executives and program managers within the Coast Guard, and through rotational assignments to the Department of Defense;

(iv) the methods by which the Coast Guard will collect and disseminate best practices and lessons learned on systems acquisition to enhance program management throughout the Coast Guard;

(v) the templates and tools that will be used to support improved data gathering and analysis for program management and oversight purposes, including the metrics that will be utilized to assess the effectiveness of Coast Guard program managers in managing systems acquisition efforts;

(vi) a description in detail of how the Coast Guard will promote a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service; and

(vii) the methods by which the accountability of program managers for the results of acquisition programs will be increased.

**SEC. 303. RECOGNITION OF COAST GUARD PERSONNEL FOR EXCELLENCE IN ACQUISITION.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams com-

prised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition program or project.

(b) **ELEMENTS.**—The program required by subsection (a) shall include the following:

(1) Specific award categories, criteria, and eligibility and manners of recognition.

(2) Procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program.

(3) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

(c) **AWARD OF CASH BONUSES.**—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any individual recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

**SEC. 304. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.**

Chapter 11 of title 14, United States Code, is amended—

(1) in section 253(a)—

(A) by inserting “and” after “considered,”; and

(B) by striking “, and the number of officers the board may recommend for promotion”;

(2) in section 258—

(A) by inserting “(a) **IN GENERAL.**—” before the existing text;

(B) in subsection (a) (as so designated) by striking the colon at the end of the material preceding paragraph (1) and inserting “—”;

and

(C) by adding at the end the following:

“(b) **PROVISION OF DIRECTION AND GUIDANCE.**—

“(1) In addition to the information provided pursuant to subsection (a), the Commandant may furnish the selection board—

“(A) specific direction relating to the needs of the Coast Guard for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

“(B) any other guidance that the Commandant believes may be necessary to enable the board to properly perform its functions.

“(2) Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.”;

(3) in section 259(a), by inserting after “whom the board” the following: “, giving due consideration to the needs of the Coast Guard for officers with particular skills so noted in specific direction furnished to the board by the Commandant under section 258 of this title.”; and

(4) in section 260(b), by inserting after “qualified for promotion” the following: “to meet the needs of the service (as noted in specific direction furnished to the board by the Commandant under section 258 of this title)”.

**SEC. 305. COAST GUARD ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.**

(a) **IN GENERAL.**—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the Commandant may—



(1) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

(2) use the authorities in such sections to recruit and appoint highly qualified persons directly to positions so designated.

(b) LIMITATION.—The Commandant may not appoint a person to a position of employment under this subsection after September 30, 2012.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from Arkansas (Mr. BOOZMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Maryland.

#### GENERAL LEAVE

Mr. CUMMINGS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.R. 1665.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as chairman of the Subcommittee on Coast Guard and Maritime Transportation, ensuring that the Coast Guard can effectively manage its acquisition efforts and that it is fully accountable for its use of taxpayer hard-earned resources has been among my highest priorities.

In his memorandum on Federal contracting management issued on March 4, President Barack Obama argued that “it is essential that the Federal Government have the capacity to carry out robust and thorough management of its contracts in order to achieve programmatic goals, avoid significant overcharges, and curb wasteful spending.”

I authored the Coast Guard Acquisition Reform Act of 2009, H.R. 1665, in an effort to institutionalize within the Coast Guard the processes and procedures that will help the service meet this standard.

I want to thank Congressman OBERSTAR, the chairman of the full Committee on Transportation and Infrastructure, for his diligent work on this bill and for his unwavering focus on effective oversight. He has tirelessly led the Transportation Committee's efforts to ensure that we fully account for the expenditure of every single taxpayer dollar in the transportation realm, and the United States public is the true beneficiary of his dedication.

I also thank the ranking member of the full committee, Congressman MICA, and the ranking member of our subcommittee, Congressman LOBIONDO, for working so closely and constructively with us on the drafting of this legislation.

Since becoming the subcommittee chairman in January, 2007, I have convened four subcommittee hearings that have focused partially or entirely on Coast Guard acquisition efforts. The major focus of these hearings has been

the multibillion-dollar Deepwater program that is intended to replace or rehabilitate the Coast Guard's air and surface assets.

When the Coast Guard signed the initial Deepwater contract, the service lacked standardized acquisition processes. It lacked a proven process to guide the generation of asset requirements, designs, and acquisition strategies, and it had only limited acquisition management capability among its staff. Without the capacity to hold its contractors accountable for their performance, the consortium hired by the Coast Guard to implement the lead systems integration function for the Deepwater program essentially took the Coast Guard for a ride that wasted hundreds of millions of taxpayer dollars. Thus, the Government Accountability Office has detailed that of the more than \$6 billion that has been appropriated for Deepwater since fiscal year 2002, nearly \$300 million has been spent on projects that were canceled or subsequently restructured, including \$95 million wasted in the failed effort to lengthen 110-foot patrol boats to 123 feet, a contract failure that the full Committee on Transportation and Infrastructure examined during an 11-hour investigative hearing convened by Chairman OBERSTAR; \$119 million wasted on the first effort to develop a vertical unmanned aerial vehicle; and \$66 million wasted on the first designs for the Offshore Patrol Cutter and the Fast Response Cutter. Mr. Speaker, I say we can do better.

The Coast Guard's need for the new assets to be produced under Deepwater is without question, but the Coast Guard will not obtain assets that fully meet its mission requirement if it cannot effectively manage its procurement Process.

□ 1700

In response to the extensive criticisms leveled at the service's acquisition management capabilities, the Coast Guard's Commandant, Admiral Thad Allen, has created a new Acquisition Directorate. Under his leadership, the service issued and is continuing to revise a “Blueprint for Acquisition Reform.” The service is also developing the process and capabilities that will enable it to assume the lead systems integration function.

During our subcommittee's most recent hearing on acquisition issues, the Coast Guard announced that under an agreement signed the morning of our hearing, all options for extending the Deepwater contract with the Lockheed Martin-Northrop Grumman team beyond the date of expiration of the current award, January 24, 2011, were eliminated. I, of course, applaud this move. That said, during the hearing we also learned that certain challenges remain.

Since 2007, the course of the acquisitions contained within the Deepwater program as currently envisioned have grown by more than \$2 billion and are

now projected to approach \$27 billion. Cost overruns in Coast Guard acquisition efforts remain a very serious concern.

Further, this month the Government Accountability Office released a new report whose very title contains a serious warning. The title reads: “As Deepwater Systems Integrator, Coast Guard is Reassessing Costs and Capabilities but Lags in Applying Its Disciplined Acquisition Approach.” This report notes that the service has moved to procure the Fast Response Cutter, the first asset acquisition effort that the service is managing entirely in-house, without having in place all acquisition documentation required by its Major Systems Acquisition Manual. Even if the Coast Guard establishes the best possible management systems, they will be of no use if they are not followed.

Further, while the service is requiring that its largest programs be managed by individuals with professional acquisition management qualifications, the service recently designated as the Program Executive Officer for the Coast Guard Acquisition Directorate an Admiral-select who lacked the highest available acquisition management qualifications, despite having a dozen captains who have achieved a Level III program management certification.

Again, I say, we can do better. Through a bipartisan effort, we have crafted detailed legislation that responds directly to the challenges in the Coast Guard acquisition management that we have so thoroughly examined in the subcommittee and full committee, and that builds on the acquisition management reforms the Coast Guard has already implemented.

H.R. 1665, the Coast Guard Acquisition Reform Act of 2009, as amended, would strengthen specific acquisition processes and establish personnel-related standards and policies for individuals in the Coast Guard's acquisition workforce. The legislation would bar the Coast Guard from using a private-sector lead systems integrator beginning September 30th, 2011, the date on which the use of private-sector lead systems integrators will end at the Department of Defense.

The legislation would require the appointment of a Chief Acquisition Officer who, at the Commandant's choice, can be either a member of the military or a civilian member of the Senior Executive Service, but who must be a Level III Program Manager and who must have 10 years of professional experience in acquisition management.

Additionally, the legislation will require that the Coast Guard put in place systems to ensure that it effectively and efficiently defines operational requirements before initiating acquisition efforts, and that all acquired assets undergo thorough developmental and operational testing to ensure that they will meet mission needs and pose no safety risks or threats to Coast Guard personnel.

The legislation would also ensure that the service develops and critically maintains within its workforce the expertise that it will need to effectively and efficiently oversee acquisition efforts in the future by requiring the service to establish career paths in acquisition management. H.R. 1665 would also provide expedited hiring authority so that the service can quickly fill vacancies in its acquisition workforce.

I, again, thank Chairman OBERSTAR, Ranking Member MICA, Ranking Member LOBIONDO for their work on this legislation, and for making this truly a bipartisan effort. I urge my colleagues to support H.R. 1665, as amended, and look forward to working with our Senate colleagues to enact a final version that can be presented to President Obama for his signature.

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, July 10, 2009.

Hon. BENNIE G. THOMPSON,  
Chairman, Committee on Homeland Security,  
Washington, DC

DEAR CHAIRMAN THOMPSON: I write to you regarding H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009".

I agree that provisions in H.R. 1665 are of jurisdictional interest to the Committee on Homeland Security. I acknowledge that by forgoing a sequential referral, your Committee is not relinquishing its jurisdiction and I will fully support your request to be represented in a House-Senate conference on those provisions over which the Committee on Homeland Security has jurisdiction in H.R. 1665.

This exchange of letters will be inserted in the Committee Report on H.R. 1665 and in the Congressional Record as part of the consideration of this legislation in the House.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR, M.C.  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
Washington, DC, July 10, 2009.

Hon. JAMES L. OBERSTAR,  
Chairman, Committee on Transportation and Infrastructure, Washington, DC.

DEAR CHAIRMAN OBERSTAR: I write to you regarding H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009".

H.R. 1665 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of an appropriate number of Members of the Committee on Homeland Security to be named as conferees during any House-Senate conference convened on H.R. 1665 or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 1665 and in the Congressional Record during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

BENNIE G. THOMPSON,  
Chairman.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Without objection, the gentleman from New Jersey (Mr. LOBIONDO) will control 20 minutes.

There was no objection.

Mr. LOBIONDO. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 1665, the Coast Guard Acquisition Reform Act of 2009. I'd like to thank the chairman of the full committee, Mr. OBERSTAR. I'd like to thank Mr. CUMMINGS and Mr. MICA for their help in moving and developing this important legislation. H.R. 1665 builds upon several provisions which passed the House during the 110th Congress and includes new language which I believe greatly improves the legislation.

Like those bills in the previous Congress, the bill would reform the service's acquisition programs and procedures, prohibit the continued use of private-sector lead systems integrators, and establish a Chief Acquisition Officer to oversee all the Coast Guard's acquisition projects.

H.R. 1665 would also require the Coast Guard to take several steps during the planning, production and acceptance period to enhance the Coast Guard's control over all parts of the process. Under the programmatic changes made by this bill, the Coast Guard will be able to use all of its many technical authorities to ensure that assets delivered meet the service's specifications and needs.

Lastly, the bill includes two new provisions which will improve the Coast Guard's ability to staff acquisition positions with the most qualified candidates. The first is limited direct hiring authority which is based on existing authority available to the other Armed Services. Under this language, the Coast Guard will be able to directly hire civilian personnel with the needed acquisition expertise. The second will allow Coast Guard promotion boards to consider the need for specialized skills and qualifications of Coast Guard officers in areas like acquisitions. This language will provide Coast Guardsmen with the opportunity to specialize in limited duty areas, such as acquisition, without negatively impacting their promotional potential in the future.

Mr. Speaker, I support this bill and urge other Members to do the same.

I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, we have no additional speakers, so I would reserve.

Mr. LOBIONDO. We have no additional speakers, Mr. Speaker, so I yield back the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume. I urge the Members of the House to vote for this very, very important bill. This

is one that our committee and subcommittee have worked on for a long time. It is overdue, and it's an outstanding bipartisan effort.

Mr. OBERSTAR. Mr. Speaker, I rise today in strong support of H.R. 1665, the "Coast Guard Acquisition Reform Act of 2009", as amended.

This legislation, authored by the Chairman of the Subcommittee on Coast Guard and Maritime Transportation, Mr. CUMMINGS, is a thorough, comprehensive response to the challenges that have confronted the Coast Guard as it has worked to manage large-scale acquisition efforts.

I also applaud the Ranking Member of the Full Committee, Congressman MICA, and the Ranking Member of the Coast Guard Subcommittee, Congressman LOBIONDO, for their diligent work on this legislation.

H.R. 1665 incorporates the lessons that the Committee on Transportation and Infrastructure has drawn from its extensive oversight of the Coast Guard's acquisition programs.

Much of that oversight has focused on the Coast Guard's Deepwater program, a 25-year program to repair or replace the service's surface and air assets that is now projected to cost nearly \$27 billion—a figure that is more than a \$2 billion increase over the cost projections developed just two years ago.

These oversight efforts have included a nearly 11-hour full Committee hearing that I convened in April 2007 to examine the results of an extensive Committee investigation that evaluated the multiple factors that contributed to the failure of the effort to lengthen 110-foot patrol boats to 123 feet.

The oversight efforts have also included four separate Coast Guard Subcommittee hearings that have examined different aspects of the Coast Guard's acquisition programs.

Through these tireless efforts, the Committee has developed a comprehensive picture of the challenges that have plagued the Coast Guard's acquisition efforts, including the use of personnel who had little experience managing a major systems acquisition, continued alteration of performance requirements even after major engineering milestones were passed, and failure to apply cost and performance measures to individual asset acquisitions within the Deepwater program. The Coast Guard has responded to these criticisms.

The service has moved to take control of the lead systems integration function that had been contracted to the Lockheed Martin-Northrop Grumman team. The service has established an Acquisition Directorate and assigned individuals with the highest available professional qualifications in acquisition management to oversee the service's largest acquisition efforts.

Further, the Coast Guard has expanded the role of the American Bureau of Shipping, and other qualified third parties, to ensure that procured assets meet the highest quality standards.

However, more remains to be done, and H.R. 1665 takes the steps necessary to institutionalize within the Coast Guard the kind of effective management practices that should, if fully implemented, enable the service to avoid the procurement failures it has had in the past.

Specifically, H.R. 1665 requires that all flag-level officers serving in the Acquisition Directorate have a Level III Program Management certification and 10 years of acquisition experience.



Despite the service's new emphasis on placing in management positions those individuals who have professional acquisition management qualifications, a Captain selected for promotion to Rear Admiral was recently named to be the Program Executive Officer for Deepwater even though he lacked a Level III program manager certification at the time of his selection. This choice is even more surprising given that, as of February 2009, the Coast Guard had 27 military officers who had achieved a Level III program manager certification, including 12 Captains.

H.R. 1665 requires the Coast Guard to develop life-cycle cost estimates for projects expected to cost more than \$10 million. Independent life-cycle cost estimates will be required for major acquisitions. With these estimates in place, we will know what it will cost to operate and maintain new assets before we commit to acquiring them.

H.R. 1665 mandates that the Coast Guard firmly establish operational requirements before awarding production contracts—so that cost thresholds and testing and evaluation standards can, in turn, be firmly established.

Further, H.R. 1665 imposes a breach ceiling on Coast Guard acquisitions—something that has long been imposed on Department of Defense acquisitions and that is overdue in the Coast Guard. Specifically, H.R. 1665 specifies that for any major acquisition, the Coast Guard must report to Congress when a cost overrun of greater than 10 percent is likely to occur, a delay of more than 180 days is likely to occur, or a failure for a new asset or class of assets is anticipated. More stringent standards are required whenever higher cost overruns or more extensive delays are anticipated.

I note that H.R. 1665 is based, in part, on legislation considered and passed twice by this House in the 110th Congress.

I urge my colleagues to support H.R. 1665.

Ms. ROS-LEHTINEN. Mr. Speaker, I rise today to voice my support of H.R. 1665, the Coast Guard Acquisition Reform Act.

I have the unique pleasure of representing over 265 miles of pristine Florida coastline, and I will never forget that it is the Coast Guard that keeps these waters safe.

Two of the largest Coast Guard Sectors in the United States, Sector Miami and Sector Key West are located in my Congressional district.

This act will direct the Coast Guard in their Acquisition efforts and make for more of full and open competition contracts.

Overall, this act will be of benefit to the Coast Guard; however, being from a District heavily involved with the Coast Guard, I know that sections of the bill could use clarification and adjustment.

Firstly, in Section 210, the Coast Guard is required to report to the appropriate congressional committees about any cost overruns.

However, the reporting requirement is set at a uniquely low threshold, a mere 10 percent.

It would be more appropriate to set this reporting requirement in line with other Department of Defense programs, ranging from 15 percent to 25 percent.

Also, in Section 302a, the act states that an individual may not be assigned as the acquisition program manager for a Level 1 or Level 2 acquisition unless the individual holds a Level III acquisition certification as a program manager.

In the interest of training Level III program manager's for Level 1 projects, this act should

leave the Coast Guards current practice in place.

This would allow program managers to gain the experience they need before being assigned to the most important of acquisition projects.

In Sec 301d, the act states that within 45 days after any design or other dispute regarding a Level 1 or Level 2 acquisition, the Coast Guard would be required to provide Congress a detailed description of the dispute and the rationale underlying any decision made by the Chief Acquisition Officer.

In the interest of keeping burdensome reporting requirements to a minimum, the act should have added the word "significant" for any design dispute.

The Coast Guard will make many fact-based and timely decisions on projects that may be internally disputed.

Congress needs to be involved in significant problems that could affect results.

Still, I urge all Members to recognize the crucial need to protect our nation by strengthening the United States' oldest continuous seagoing service, the United States Coast Guard.

I urge my colleagues to vote "yes" on this act.

Mr. CUMMINGS. Mr. Speaker, I yield back my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. CUMMINGS) that the House suspend the rules and pass the bill, H.R. 1665, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. LOBIONDO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### RECOGNIZING GENERAL AVIATION

Mr. CUMMINGS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 508) expressing the sense of the House of Representatives that the general aviation industry should be recognized for its contributions to the United States.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 508

Whereas general aviation includes all civilian flying except scheduled passenger airlines;

Whereas there are nearly 600,000 licensed pilots in the United States and an estimated 500,000 of these pilots fly general aviation aircraft;

Whereas the United States accounts for more than half of all general aviation activity worldwide;

Whereas 170,000,000 passengers fly annually using personal aviation;

Whereas there are more than 231,000 active general aviation aircraft in the United States;

Whereas the general aviation industry contributes more than \$150,000,000,000 to United States direct and indirect economic output;

Whereas the United States general aviation industry employs nearly 1,300,000 people whose collective annual earnings exceed \$53,000,000,000;

Whereas general aviation contributes high-skill jobs in aircraft manufacturing, avionics and technology development, flight training, maintenance, modification, and technical support;

Whereas an estimated 65 percent of general aviation flights are conducted for business and public services, many of which are located in or need access to smaller communities that do not have commercial aviation;

Whereas general aviation helps save lives through the transport of blood supplies, vital transport organs, and other time-critical items;

Whereas general aviation contributes to economic development by facilitating meetings and other activities for businesses of all sizes;

Whereas general aviation is used to protect the environment by assisting with the surveying of wildlife, the mapping of wetlands, and the patrolling of parklands;

Whereas general aviation is a vital tool for agricultural producers, who often rely on air service for crop planting and protection as well as livestock herd management;

Whereas general aviation aids in law enforcement through patrolling highways, apprehending suspects, monitoring national borders, and locating lost children;

Whereas there are 5,200 public use airports and more than 13,000 privately owned landing facilities in the United States; and

Whereas only about 500 of these airports have commercial airline service, making general aviation an integral part of the transportation system that supports communities across the United States and provides essential air travel options to businesses and the public: Now, therefore, be it

*Resolved*, That the House of Representatives—

(1) recognizes the many contributions of the general aviation industry; and

(2) encourages general aviation activities.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from New Jersey (Mr. LOBIONDO) each will control 20 minutes. The Chair recognizes the gentleman from Maryland.

#### GENERAL LEAVE

Mr. CUMMINGS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend remarks and to include extraneous material on H. Res. 508.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H. Res. 508, introduced by the gentleman from Nebraska (Mr. FORTENBERRY) and urge its adoption by the House today. H. Res. 508 recognizes the contributions made to the United States by the general aviation industry. Current data indicate this industry contributes more than \$150 billion